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IN THE

Supreme Court of the United States

October Term, 1941

No. 1011

LUIGI SCHIAFFINO, PAOLO CALTAFIANO, LORENSO BARZELATTO, CESARE DI MAZZO, CARLO EMANUELE GALLINO, FRANCESCO SCIANCALEPORE, GIUSEPPE ZIZZO, LORENZO SALVATORE MAFFEI, SERGIO MINERVINE, ANGELO ARMENIA, ARMANDO MORFI, DANIELE SORRENTINO, UMBERTO SARBIA, PASQUALE DE GREGORIO, CONSTANTINO CABOARA and GIUSEPPE ABRAZZO,
Petitioners,

AGAINST

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI AND SUPPORTING BRIEF

HOMER L. LOOMIS,
CHARLES RUZICKA,
Counsel for Petitioners.

INDEX.

	PAGE
Petition for Writ of Certiorari	1–9
A.—Summary Statement of Matter Involved	1–6
B.—Reasons Relied on for Allowance of Writ	6–9
Brief in Support of Petition for Certiorari	10–11
A.—Introductory Statements	10–11
1.—Report of Opinion Below	10
2.—Jurisdiction	10–11
3.—Specifications of Error	11
B.—Argument	11

TABLE OF CASES.

Bersia et al. v. *United States*, 124 F. (2) 310	11

TABLE OF STATUTES.

Act of June 15, 1917, Title 3, c. 30, 40 Stat. 221 (18 U. S. C. A., sec. 502)	3
Judicial Code, Sec. 240(a)	11
Act of February 13th, 1925 (43 Stat. 938; 28 U. S. C. A., sec. 347)	11

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Petitioners,

against

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the United States Supreme Court:

The petition of Luigi Schiaffino, Paolo Caltafiano, Lorenso Barzelatto, Cesare Di Mazzo, Carlo Emanuele Gallino, Francesco Sciancalepore, Giuseppe Zizzo, Lorenzo Salvatore Maffei, Sergio Minervine, Angelo Armenia, Armando Morfi, Daniele Sorrentino, Umberto Sarbia, Pasquale De Gregorio, Constantino Caboara and Giuseppe Abrazzo respectfully alleges and propounds as follows:

A.

Summary Statement of Matter Involved.

1.

Your petitioners are mariners, to wit, respectively, the master, the chief engineer, two second engineers and sea-

men of the steamship Pietro Campanella, who were,—until seized, removed from their vessel and confined, as hereinafter narrated,—attached to and living aboard that vessel, with the other members of her crew in the port of Baltimore, Maryland; the said steamer Pietro Campanella then being of Italian register, flying the Italian flag and being laid up at dead anchorage in said port for the duration of the war between Italy and Great Britain.

As stipulated herein, the Pietro Campanella had, by "the Port Authorities and Captain of the Port of Baltimore," been "placed at dead anchorage," "so as to immobilize the ship for an indefinite period," "in a place where she would not or could not interfere with the navigation of ships in the port of Baltimore" (Pr. Rec., p. 8).*

And, as also stipulated, the said steamer "was not engaged in foreign commerce from October 1, 1940, to March 30, 1941" (*id.*).

2.

Your petitioners were indicted, tried and convicted, after trial by jury, in the United States District Court for the District of Maryland on the charge of *tampering* with the motive power and navigational appliances of their said steamer while she was at dead anchorage as aforesaid in the said port of Baltimore in the month, and prior to the 30th, of March, 1941, and your petitioners have been sentenced to imprisonment in a federal penitentiary for terms of three years in the case of Luigi Schiaffino, the Master, two years in the case of Paolo Caltafiano, Chief Engineer, and one year and one day in the case of all the other petitioners, save Carlo Emanuele Gallino, who was sentenced to be imprisoned in jail for three months.

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*This and similar notations refer to the pages of the printed record filed herein.

3.

The proofs showed that your petitioners, in doing what they did, were acting pursuant to the orders both of the owner of the vessel and the Italian naval authorities; failed to show that they were acting for any purpose other than to place their vessel in such a condition that, if she should fall into the hands of their country's enemy, she could not be beneficially used by that enemy for a long time to come and, then, only after the execution of extensive repairs at great expense; and failed to show that your petitioners knew of, or intended to violate, any law of the United States prohibiting their doing what they respectively did.

The proofs further show that, shortly following the dismantling of the said machinery in the engine room of their said steamer, your petitioners were forcibly removed from their steamer by United States Coast Guard officers on or about the thirtieth day of March, 1941, and have been kept in confinement ever since.

4.

Your petitioners appealed from the said judgments of conviction and imprisonment to the United States Circuit Court of Appeals for the Fourth Circuit, which, however, on December 26, 1941, entered a judgment affirming the judgments entered below, and on January 31, 1942, denied your petitioners' timely application for a rehearing.

5.

Petitioners feel aggrieved and complain of the proceedings had below for the following reasons:

a.

The application to the petitioners of Title 3 of the Act of June 15, 1917, c. 30, 40 Stat. 221 (18 U. S. C. A., sec. 502), though what they did was done:

(1) With the consent and approval, and at the intance, of the owner of their vessel;

(2) Without involving any trespass on or wrong to, the person or property of another;

(3) To the machinery of a laid-up ship not engaged in foreign commerce;

(4) Without any criminal intent; and

(5) Without any intent to imperil or undermine the safety of their steamer.

(Assignments of Error, 3rd, cert. typ. tr. rec., 532; 4th, 532; 5th, 533; 6th, 534; 7th, 535; 9th, 538; 12th, 540; 13th, 541; 15th, 542; 16th, 542; 18th, 543; 19th, 544; 20th, 545; 21st, 546; 22nd, 547; 25th, 548; 26th, 549; 27th, 549; 28th, 550; 29th, 550; 30th, 551; 31st, 551; 32nd, 551).*

b.

The failure of the Circuit Court of Appeals to hold that the petitioners' demurrer to the indictment, as charging no crime punishable under the laws of the United States, should have been sustained and the judgments reversed because:

(1) The indictment failed to allege the possessor-ownership of the vessel to be in someone other than the petitioners or those at whose instance they acted;

(2) The indictment failed to allege that the vessels were engaged in foreign commerce; and

(3) The indictment depended for its validity upon a construction of the statute, that, if permissible, rendered the statute unconstitutional.

(Assignments of Error, 1st, cert. typ. tr. rec., 532; 4th, 532; 30th, 551; 32nd, 551).

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*These and similar notations refer to pages of the certified typewritten transcript of record filed herewith.

c.

The failure of the Circuit Court of Appeals to hold that the trial judge should have directed a verdict of "not guilty" on the evidence, as being insufficient to warrant a verdict against these petitioners, and to reverse the judgment below accordingly because:

(1) The proofs did not reasonably tend to show that the acts complained of involved a trespass by petitioners upon the property of others or were done without the owner's cognizance, consent and approval;

(2) The proofs showed the vessel not to have been engaged in foreign commerce;

(3) The proofs did not reasonably tend to show the acts complained of to have been accompanied by any malice or criminal intent as charged in the indictment; and

(4) The proofs did not reasonably tend to show that the acts complained of were done with an intent to injure or endanger the *safety* of the vessel within the language of the statute.

(Assignments of Error, 4th, cert. typ. tr. rec., 532; 19th, 544; 20th, 545; 27th, 549; 28th, 550; 31st, 551).

d.

The denial of petitioners' right to have the jury instructed

(1) That the statute had no application to the petitioners' acts, if those acts were done with the cognizance, consent and approval of the owner of the Pietro Campanella;

(2) That the statute had no application to the petitioners' acts, unless the vessel was engaged in foreign commerce;

(3) That before the petitioners could be found guilty the jury were required to be satisfied beyond

a reasonable doubt that, in doing what they did, they were acting with a purpose to commit a wrong against some other person or his property or knew of the statute and intended to violate it.

(Assignments of Error, 5th, cert. typ. tr. rec., 533; 6th, 534; 7th, 535; 9th, 538; 12th, 540; 13th, 541; 15th, 542; 16th, 542; 18th, 543; 19th, 544; 20th, 545; 21st, 546; 22nd, 547; 25th, 548; 26th, 549; 27th, 549; 28th, 550; 29th, 550; 30th, 551).

e.

The denial of the petitioners' right to have the judgment of the trial court arrested pursuant to the motion therefor seasonably made by the petitioners for errors committed as hereinbefore noted.

(Assignment of Error, 32nd, cert. typ. tr. rec., 551).

B.

Reasons Relied on for Allowance of Writ.

The reasons relied on by your petitioners for an allowance of the writ herein prayed for are that the Circuit Court of Appeals for the Fourth Circuit has:

1. Rendered a decision in conflict with the Fifth Amendment to the Constitution of the United States and the general current of authority in other Anglo-Saxon jurisdictions.

2. Because the Circuit Court of Appeals has decided important questions of general law in a way untenable and in conflict with the general current of authority.

3. Because the Circuit Court of Appeals has decided important questions of federal law that have not been but should be settled by this Court.

4. Because the Circuit Court of Appeals has decided federal questions in a way that conflicts with the Fifth amendment to the Constitution of the United States, the applicable decisions of this Court and the judicial history of federal statutes *in pari materia.*

5. And because the Circuit Court of Appeals has so far departed from the accepted and usual course of ju-

dicial proceedings, and has so far sanctioned such a departure by the United States District Court for the District of Maryland, as to call for the exercise of this Court's power of supervision.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the decision of the United States Circuit Court of Appeals for the Fourth Circuit should be granted.

LUIGI SCHIAFFINO,

PAOLO CALTAFIANO,

LORENSO BARZELATTO,

CESARE DI MAZZO,

CARLO EMANUELE GALLINO,

FRANCESCO SCIANCALEPORE,

GIUSEPPE ZIZZO,

LORENZO SALVATORE MAFFEI,

SERGIO MINERVINE,

ANGELO ARMENIA,

ARMANDO MORFI,

DANIELE SORRENTINO,

UMBERTO SARBIA,

PASQUALE DE GREGORIO,

CONSTANTINO CABOARA,

GIUSEPPE ABRAZZO.

State of Maryland,
City of Baltimore—ss.:

Luigi Schiaffino, Paolo Caltafiano, Lorenso Barzelatto, Cesare Di Mazzo, Carlo Emanuele Gallino, Francesco Sciancalepore, Giuseppe Zizzo, Lorenzo Salvatore Maffei, Sergio Minervine, Angelo Armenia, Armando Morfi, Daniele Sorrentino, Umberto Sarbia, Pasquale De Gregorio, Constantino Caboara, Giuseppe Abrazzo, being duly sworn, depose and say respectively that they are familiar with the contents of the foregoing petition and that the same is true to the best of their knowledge, information and belief.

LUIGI SCHIAFFINO,
PAOLO CALTAFIANO,
LORENSO BARZELATTO,
CESARE DI MAZZO,
CARLO EMANUELE GALLINO,
FRANCESCO SCIANCALEPORE,
GIUSEPPE ZIZZO,
LORENZO SALVATORE MAFFEI,
SERGIO MINERVINE,
ANGELO ARMENIA,
ARMANDO MORFI,
DANIELE SORRENTINO,
UMBERTO SARBIA,
PASQUALE DE GREGORIO,
CONSTANTINO CABOARA,
GIUSEPPE ABRAZZO.

Subscribed and sworn to
before me this 4th day of March, 1942.

E. Allen Schilpp,
Notary Public,
Baltimore, Maryland.

I certify that I have read the foregoing petition and that it sets forth in my opinion a proper case for the granting of a writ of certiorari and is not filed for purpose of delay.

HOMER L. LOOMIS,
Counsel for Petitioners.